



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in the case of Metropolitan Water District of Southern California v. Francis N. Domenigoni et al.

MEETING DATE: November 20, 1996

PREPARED BY: City Attorney

RECOMMENDATION: That the city join the amicus brief in the case of Metropolitan Water District of Southern California v. Francis N. Domenigoni et al.

BACKGROUND: Amicus briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves a rather narrow field of law called eminent domain. That field of law involves the exercise by a jurisdiction of the power of condemnation to acquire property for public purposes. In this case, Metropolitan Water District of Southern California (MWD) sought to acquire land in order to build a dam as part of MWD's Eastside Reservoir project.

Following a trial on the issue the property owner in question was awarded \$43,200,000 for 510 acres of ground. This figure was in excess of five times the appraised value of the property as appraised by MWD. MWD has appealed the trial court decision. The issues on appeal deal with the concept of severance damages as well as whether or not pretrial condemnation activity of MWD resulted in unreasonable delays which caused a reduction in the value of the property.

With regard to the severance issue, a novel approach was constructed by the court to find that property located a half mile from the property which was to be taken suffered severance damages. Generally speaking, severance damages to property are only recoverable when the remaining portion of a parcel of ground suffers by virtue of the purchase. In this case a separate parcel located a half mile from the property that was taken was found to suffer severance damages. The extension of severance damages to noncontiguous parcels appears to have no support in precedent and if allowed to stand has the potential for causing public agencies to spend inordinate amounts of money to acquire property for public purposes.

With regard to precondemnation activity by MWD, the court found that MWD had not engaged in any improper precondemnation activity or delay. Nevertheless, the court allowed the property owner to introduce evidence of precondemnation purchases of nearby property which allowed the jury to hear information which the court had ruled basically was not improper conduct by MWD. This case deserves support so that the area of eminent domain law does not become expanded beyond its current legal base.

FUNDING: Not applicable.

Respectfully submitted,

A handwritten signature in black ink that reads "Randall A. Hays".

Randall A. Hays, City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager